will not prejudice the absent parties. 33 Sup. Ct. xxix (1912), 28 U.S.C.A. 21, 132–43 (1928). See *California v. Southern Pacific Co.*, 157 U.S. 229, 256 (1895). Furthermore, to require the Postmaster General's staff to keep track of all suits attacking fraud orders brought against local postmasters and to provide adequate defense in these suits would be to impose some inconvenience and expense. But this inconvenience is not very great; rather it is much less than the inconvenience of defending minor officers who are attempting to enforce allegedly unconstitutional laws. See 3 U.S.L.W. 1237 (Aug. 18, 1936) (2000 suits brought against collectors of AAA processing taxes). And the requirement that the Postmaster General be joined would practically destroy the right to attack postal rulings in most cases because the suits would have to be brought in Washington, D. C., in order to get service on the Postmaster General. *Wheeler v. Farley*, 7 F. Supp. 433 (Cal. 1934). The difficulties of intervention by the Postmaster General with a local United States Attorney as counsel are slight compared with the difficulties and expenses of the citizen, unacquainted with lawyers in the District of Columbia, in filing suit and proving his case in Washington. The reason which Judge Hand reluctantly tendered for his decision, that a subordinate official might be unnecessarily bewildered by a "cross-fire" of conflicting orders from his superior and the courts in his own and other circuits, is admittedly unconvincing. The subordinate may obey his superior until a conflicting court order is directed toward him, and thereafter must obey the court. The only serious practical consideration for decision in these cases is the desirability of limiting the number of cases in which the Postmaster General will have to justify his rulings before a court. Though the injury may be slight in most of these cases and the threat of bureaucracy remote, it will be best in the long run to preserve a simple and efficient remedy for the citizen by discarding the rule applied in the *National Conference* case, or by passing a venue and process statute enabling a plaintiff to join a superior federal officer in any federal court and obtain personal service on him in Washington.

Right of Privacy—Publication of Picture in Newsreel as Trade Purpose—[New York].—The plaintiff's picture, taken while she was exercising in a gymnasium with other stout women, appeared in the defendant's newsreel. She sued under § 51 of the New York Civil Rights Law providing: "Any person whose name, portrait or picture is used within this state for advertising purposes or for the purposes of trade . . . . may . . . . sue and recover damages for any injuries sustained by reason of such use . . . ." Cahill's N. Y. Cons. L. 1930, c. 7, § 51. *Held*, for the defendant. Publication of matters of public interest is not a trade purpose within the meaning of the statute. *Sweenek v. Pathe News*, 16 F. Supp. 746 (N.Y. 1936).

The New York statute, protecting individuals from invasions of their privacy for advertising or trade purposes, has neither flooded the courts with litigation nor given them particular difficulty in defining the scope of this protection. Traditional arguments for and against the recognition of a right of privacy failed to distinguish among the types of cases in which protection might be sought within this category. See Warren and Brandeis, The Right to Privacy, 4 Harv. L. Rev. 193 (1890); Hadley, The Right to Privacy, 3 Northwestern L. Rev. 1 (1894). Common law courts have not drawn a distinction between advertising and other cases but have either refused to recognize any right of privacy or have extended protection on more general grounds. See *Roberson v. Rochester Folding Box Co.*, 171 N.Y. 538, 64 N.E. 442 (1902) (lack of

precedent and fear of burdensome litigation relied upon to deny recovery); *Henry v. Cherry & Webb*, 30 R.I. 13, 73 Atl. 97 (1909) (same broad language and recovery refused even though plaintiff's picture was used for advertising purposes); *Atkinson v. Doherty*, 121 Mich. 372, 80 N.W. 285 (1899) (plaintiff refused an injunction where deceased husband's name and picture were used to advertise defendant's product). But see *Pavesich v. New Eng. L. Ins. Co.*, 122 Ga. 190, 50 S.E. 68 (1905) (plaintiff recovered for unauthorized use of his picture in defendant's advertisement); *Kunz v. Allen*, 102 Kan. 883, 172 Pac. 532 (1918) (another advertising case in which plaintiff recovered); *Foster-Milburn Co. v. Chinn*, 134 Ky. 424, 120 S.W. 364 (1909) (plaintiff recovered for unauthorized use of his name as endorsement of defendant's product). *Cf. Brents v. Morgan*, 221 Ky. 765, 299 S.W. 967 (1927) (plaintiff recovered for defendant's placarding him as a debtor—not an advertising case); *Itzkovitch v. Whitaker*, 115 La. 479, 39 So. 499 (1905) (police inspector enjoined from placing innocent plaintiff's picture in rogue's gallery); *Bazemore v. Savannah Hospital*, 171 Ga. 257, 155 S.E. 194 (1930) (plaintiff recovered for publication of picture of his deceased deformed child).

Probably the most cogent argument against the recognition of any right of privacy is that such recognition will endanger the freedom of the press. See *Hillman v. Star Publishing Co.*, 64 Wash. 691, 117 Pac. 594 (1911). But this freedom extends only to the dissemination of matters of public interest, and the experience of New York courts has shown that such matters are easily distinguishable from advertising. See *Jeffries v. N. Y. Evening Journal*, 67 Misc. 570, 124 N.Y.S. 780 (1910); *Moser v. Press Pub. Co.*, 59 Misc. 78, 109 N.Y.S. 963 (1908). And these courts have construed the phrase "purposes of trade" as applying only to the sale or publication of matters *not* of public interest. *Humiston v. Universal Film Co.*, 189 App. Div. 407, 178 N.Y.S. 752 (1919); *Colyer v. Fox*, 162 App. Div. 297, 146 N.Y.S. 999 (1914); *cf. Binns v. Vitagraph Co.*, 210 N.Y. 51, 103 N.E. 1108 (1913); *Blumenthal v. Picture Classics*, 235 App. Div. 570, 257 N.Y.S. 800 (1932). On the other hand where the plaintiff's picture or name has been used in a publication for advertising purposes, he has been allowed to recover. *Martin v. New Metropolitan Fiction*, 139 Misc. 290, 248 N.Y.S. 359 (1931); *D'Altomonte v. N. Y. Herald*, 154 App. Div. 453, 139 N.Y.S. 200 (1913); *Eliot v. Jones*, 66 Misc. 95, 120 N.Y.S. 989 (1910).

Finally, the threat of unduly burdensome litigation has not been borne out. In the thirty-three years since the statute was passed, New York courts have been obliged to decide some twenty-odd cases. In view of the more clearly-defined need for protection of a right of privacy in advertising and trade purpose cases and of its demonstrated ease of application, the way for legislative or judicial action in other states seems free from the preconceived difficulties of the older cases.

Torts—Death Statutes—Liability of Telephone Company for Failure in Service—[New York].—Unable to obtain a response from the central operator of the defendant company, the plaintiff, a subscriber, was delayed in reaching his physician in attendance upon his sick child. The child died. Alleging that the child would not have died it there had been no delay, plaintiff sued under the Decedent Estate Law (Cahill's N.Y. Cons. L. 1930, c. 13, art. 5), which provides that the next of kin of a decedent has a cause of action for wrongful death against the one who "would have been liable to an action in favor of the decedent by reason thereof if death had not ensued."